

**IDAHO STATE
DEPARTMENT OF AGRICULTURE**

APPROVED BY:



ORIGINAL EFFECTIVE DATE:
December 19, 1990

REVISION DATE:
October 06, 2003

TITLE: PUBLIC RECORDS ACT POLICY

PURPOSE:

The Idaho Public Records Act was passed in 1990. The Act, found at Idaho Code §§9-337 through 9-350, Idaho Code, relates to the disclosure of information by all state and local government entities. The intent of this law is that all records maintained by public agencies are open to the public for inspection and copying at all reasonable times, unless the information is specifically exempted from disclosure by law.

DEFINITIONS:

Key terms are defined in the Act. Some of the law's most important definitions are:

1. **Public Record** - includes, but is not limited to, any writing containing information relating to the conduct or administration of the public's business prepared, owned, used or retained by any state or local agency regardless of physical form or characteristics.
2. **Writing** - includes, but is not limited to, handwriting, typewriting, printing, photostatting, photographing and every means of recording, including letters, words, pictures, sounds or symbols or combination thereof, and all papers, maps, magnetic or paper tapes, photographic films and prints, magnetic or punched cards, discs, drums or other documents.
3. **Inspect** - means the right to listen to, view and make notes of public records as long as the public record is not altered or damaged.

4. **Copy** - means transcribing by handwriting, photocopying, duplicating machine, and reproducing by any other means so long as the public record is not altered or damaged.
5. **Custodian** - means the person having personal custody and control of the public records in question. If no such designation is made by the public agency, then custodian means any public official having custody of, control of, or authorized access to public records and includes all delegates of such officials, employees or representatives.

EXEMPTIONS:

There is a presumption that all public records are open at all reasonable times for inspection except as otherwise expressly provided by statute. *See* Idaho Code §9-338(1).

Certain records are exempt from disclosure per Idaho Code §9-340, Idaho Code. Because of the variety of records maintained by the Department, custodians are requested to become familiar with §9-340 exemptions.

Records may contain both exempt and non-exempt material. The public agency is responsible for separating the exempt from the non-exempt information and supplying the non-exempt record. The Act prohibits denying access based upon the fact that the record contains both types of materials.

Even if an exemption applies to a record, the law allows disclosure of statistical information that does not identify any particular person [Idaho Code §9-338(10)] and a limited right of access to records which pertain to a person by the person [Idaho Code §9-342]. The Department may verify the identity of a person requesting a record in accordance with Idaho Code §9-342.

PROCEDURE FOR REQUESTING TO INSPECT, EXAMINE OR COPY PUBLIC RECORDS - RESPONSES TO REQUESTS:

It is the Department's policy that the majority of the requests to inspect, examine or copy public records will be routinely granted. All requests for public records shall be in writing unless the request is for records routinely provided by the Department such as copies of Department laws and rules.

The Department will respond to a written request for records only if the request is signed by the requester who must also provide a mailing address other than an e-mail address. E-mail is not an accepted method for requesting public records. The Department will not respond to public records requests via e-mail.

Public records subject to examination and copying may be reviewed at the Department from 8:00 a.m. to 5:00 p.m., Monday through Friday, except state holidays. The examination may be reasonably restricted to allow the custodian of the documents to retain control of the documents inspected or examined to prevent their removal, alteration, or destruction. The Department may provide for inspection, examination or copying of public records outside normal business hours under appropriate circumstances.

The custodian receiving a written request for public records shall have three (3) working days to either grant or deny the requested information. This time may be extended for ten (10) working days from the date of the request if the records cannot be easily located or are voluminous. If a time extension is necessary, or if the request is approved, partially approved, or denied, the custodian must notify the requestor using the appropriate letters which include an explanation of the rights of the requestor.

The law prohibits asking why the information is needed [Idaho Code §9-338(4)] except to verify the identity of a person requesting a record in accordance with Idaho Code §9-342, or to ensure that the requested record or information will not be used for purposes of a mailing or telephone list prohibited by Idaho Code §9-348. It is permissible to explain what records are available and to help identify the material that is desired. It is also permissible to allow the person to examine non-exempt files in order to select the specific records needed. Staff must maintain vigilance to see that records are not altered or destroyed, but the law prohibits examination of any copy, photograph or notes in the person's possession.

COSTS FOR PROVIDING PUBLIC RECORDS:

Photocopying fees shall be ten cents (10¢) per page. The Department will charge only if the request involves copies of fifty (50) or more pages. For a request that includes fifty (50) pages or more, the Department will charge for all pages copied. For example, a request for a document containing fifty-five (55) pages, the fee will be \$5.50, plus postage, sales tax, and labor costs, where applicable. The fee charged for providing information in the form of computer tapes, discs, microfilm, or similar record media may not exceed the amount of the direct cost of copying. In addition, the fee charged must include sales tax at the applicable Idaho state rate.

When the Department receives a request for copying, the total charge for which exceeds \$5.00, the Department may request advance payment for the copying charges. The Department shall include an estimate for postage as part of the advance payment. For copying costs of less than \$5.00, the Department will attach an invoice for copying and postage charges, if applicable. If a request is for more than one hundred (100) pages of records, postage fees will be determined based on the weight of the copies.

Idaho Code § 9-338(8)(a) provides that a public agency may establish a fee to recover the actual labor cost associated with locating and copying documents for a public record if:

1. the request is for more than one hundred (100) pages of paper records; or

2. the request includes records from which non-public information must be deleted; or,
3. the actual labor associated with locating and copying documents for a request exceeds two (2) person hours.

This agency's fee for such labor costs is currently \$15.00 per hour per staff person.

Idaho Code provides that the Department may not charge any cost or fee for copies or labor when the requester demonstrates either (1) the inability to pay, or (2) that the public's interest or the public's understanding of the operations or activities of government or its records would suffer by the assessment or collection of any fee.

The Act does not require the Department to provide multiple copies of the same document.

INSPECTION AND CORRECTION OF A PERSON'S OWN RECORDS:

After providing identification, a person may inspect, copy and request correction of public records pertaining to that person. A correction, or a written refusal to make the correction, must be made within ten (10) calendar days from the receipt of the request. Refer these requests to the person who administers the agency or a designated custodian immediately.

Idaho Code §9-342(3) prohibits access to certain records pertaining to oneself, if the information: relates to exempt investigatory records of ongoing investigations; is compiled in reasonable anticipation of a civil action or proceeding which is not otherwise discoverable; relates to adoption records; or, is otherwise exempt from disclosure by statute.

DENIAL OF REQUEST:

If there is any doubt about whether information should be disclosed, ask for a written request and immediately direct it to a designated custodian. It is this agency's policy that such a request shall be reviewed by the agency's attorney.

If a request for a record is denied in whole or in part, the Act requires the person who administers the agency or a designated custodian to notify the person in writing. This notice shall state:

1. that the attorney for the agency has reviewed the request, or that the agency had the opportunity to consult with an attorney and has chosen not to do so;
2. the statutory basis for the denial;
3. a simple statement of the right to appeal and the time limit for appeal; and,
4. a certificate of mailing.

If a request to correct an individual's record is denied, written notification is required within ten (10) calendar days of the receipt of the request. The notice of refusal to amend a record must state the reasons for the refusal, and provide the statement of appeal rights and certificate of mailing mentioned above.

The time limit for filing an appeal is one hundred eighty (180) days from the date the notice of denial is mailed. The sole remedy for protesting the public agency's decision is to file a petition in the district court of the county where the records or some part of them are located, requesting the court to compel the agency to make the information available or to correct the record.

If a request is denied, the requested records must be retained until the end of the appeal period, until there has been a decision on an appeal, or, as otherwise provided by law, whichever is longer. Attach a note to the records stating that the documents shall not be destroyed until the appeal process has terminated.

PENALTY AND IMMUNITY:

The law provides a penalty of up to \$1,000 for a deliberate, bad faith denial of information that should be disclosed. It also provides immunity from liability for the release of records as long as there is a good faith attempt to comply with the law's requirements. Therefore, it is important to refer immediately any questions or any requests that seem doubtful to the Legal Bureau.